

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

TUESDAY, THE 16TH JANUARY 2007 / 26TH POUSHA 1928

WP(C).No. 8195 of 2006(A)

PETITIONER:

JOY, S/O.THOMAS,
MAKKATTUKULANGARA HOUSE,
MUNDUR DESOM, TRICHUR TALUK,
TRICHUR DISTRICT.

BY ADV. SRI.T.SETHUMADHAVAN
SRI.PUSHPARAJAN KODOTH
SRI.K.JAYESH MOHANKUMAR

RESPONDENTS:

1.THE PRESIDENT,
KAIPARAMBU GRAMA PANCHAYATH,
THRISSUR DISTRICT.

2. BABU.M.V,
S/O.VELAYUDHAN, METHILAKATHU HOUSE,
UNITY ROAD, KURIACHIRA.P.O,
THRISSUR-680 006.

R2 BY ADV. SRI.V.CHITAMBARESH
SRI.T.C.SURESH MENON
R1 BY ADV.SRI.A.C.DEVY

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
16/01/2007, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

PIUS C. KURIAKOSE,J.

W.P.(C)No.8195 of 2006

Dated: 16th January, 2007

JUDGMENT

The petitioner who is the owner of 34.833 cents of land in Survey No.261/2 in Anjoor Village of Trichur Taluk situated by the side of Thrichur-Kunnamkulam road is aggrieved by what he describes as enclosure of a waterchal having a length of 150 meters and width of 8 meters which was used by him for his ingress and egress to his property lying on the northern side of the waterchal. It is stated that the 2nd respondent is having a small plot of land immediately on the eastern side of Trichur-Kunnamkulam road and the waterchal is passing through the further east of that small bit of land. Another bigger plot of the remaining land belonging to the 2nd respondent is situated on the eastern side of the waterchal. The two plots are separated by the waterchal in question. The petitioner's grievance is that the 1st respondent-Panchayat has passed resolution No.3 enabling the 2nd respondent to place concrete slabs over the waterchal for enclosing his two plots into a compact plot for the purpose of starting a petroleum outlet. Referring to Section 218 of the Kerala Panchayat Raj Act, the petitioner contends that the waterchal remains vested in the 1st respondent-Panchayat and therefore the 1st respondent has no right to divest any portion of the

waterchal to the benefit of a private individual like the 2nd respondent. He complains that if the area through which the waterchal passes is permitted to be encroached by the 2nd respondent along with the remaining portions of the 2nd respondent's property, the petitioner's right and the right of the general public to pass through the ridges of the waterchall will be restricted. As far as the petitioner is concerned, the entry to his property will be prevented. The petitioner preferred Ext.P3 appeal before the Tribunal for Local Self Government Institutions. The Tribunal has passed Ext.P4 order in that appeal and the petitioner's grievance is that by Ext.P4 order the appeal has been dismissed. It is impugning Exts.P3 and P4 that the petitioner has filed this Writ Petition seeking to quash Exts.P3 and P4. The second prayer in the Writ Petition is that the 1st respondent-Panchayat be directed to strictly implement Ext.P4 order.

2. As far as the directions in the operative portion of Ext.P4 are concerned, a detailed counter affidavit has been filed on behalf of the 2nd respondent. It is pointed out therein that the petitioner had unsuccessfully moved the civil court first seeking an order of injunction to restrain laying of concrete slabs over the waterchal as permitted by Ext.P3. After the dismissal of the application for

injunction, the petitioner preferred C.M.Appeal No.187 of 2005 before the District Court, Thrissur. Even the C.M.A. was dismissed and the concrete slabs were actually laid after the dismissal of the C.M.A. The present Writ Petition has been filed only after noticing that the prayer for injunction has become infructuous. However, it is stated that the 2nd respondent has no objection whatsoever in public walking over the concrete slabs or taking vehicles through the same. The 1st respondent in whom the waterchal stands vested has got every authority to pass Ext.P3 resolution. The concrete slabs had to be placed so that absolute property belonging to the 2nd respondent lying on either sides of the waterchal could be used by the 2nd respondent for the conduct of the petroleum outlet. Ext.P4 ensures that the portion of the concrete slabs is not enclosed so as to prevent the passage of the public over the same. It is further contended that the Writ Petition has been instituted at the instigation of a rival petroleum outlet dealer who apprehends that his business will be prejudicially affected if a new retail outlet is started. It is further stated in the counter affidavit that the Advocate Commissioner in the suit reported that the waterchal is not fit for traffic and that its ridges are also not used even for pedestrian traffic.. The waterchal remains marshy

except during the rainy season and laying of concrete slabs over the same is conducive for human safety also. The petitioner cannot have any genuine grievance regarding the laying of concrete slabs. It is also pointed out that the 2nd respondent belongs to the Scheduled Caste community and his endeavour for commissioning of a petroleum outlet is being delayed or defeated.

3. To the above counter affidavit, a reply affidavit has been submitted by the petitioner refuting the contentions and reiterating the stand in the Writ Petition.

4. The Panchayat has also filed a counter affidavit which is almost in line with the contentions raised by the 2nd respondent. Inter alia it is contended therein that the Panchayat is quite competent to pass Ext.PP3 resolution as the waterchal has become vested under the Panchayat by virtue of Section 218 of the Kerala Panchayat Raj Act. By putting concrete slabs on either sides of the waterchal, the general public is being helped for taking vehicles over the same and for walking over the concrete slabs. No prejudice or difficulty is caused to the petitioner. Justifying Ext.P4 order of the Tribunal, the counter affidavit highlights the directions issued by the Tribunal while dismissing the appeal.

5. Very elaborate submissions were addressed before me by Mr.T.Sethumadhavan, counsel for the petitioner, Mr.V.Chitambaresh, counsel for the 2nd respondent and Mr.A.C.Devy, counsel for the Panchayat. Learned counsel made submissions on the basis of the pleadings of their respective clients and the materials available on record. Mr.Chitambaresh would place before me two photographs pertaining to the original condition of the waterchal and also its present condition.

6. I have considered the submissions in the light of the pleadings and the documents placed on record. I have already disposed of W.P.C.No.13914/06 which was filed by the very same petitioner impugning the order of the District Court in C.M.A.No.187/05. I have considered the materials which were placed on record in that Writ Petition also, particularly, the copies of the order passed by the learned Munsiff in the injunction application and the judgment of the learned District Judge in the C.M.Appeal preferred against the order of the learned Munsiff.

7. I do not find any warrant for interfering with Ext.P4 invoking the powers of judicial review under Article 226 of the Constitution. The personal grievance which is voiced by the petitioner is that on

account of laying of concrete slabs by the 2nd respondent over the waterchal, his right of way through the waterchal in question and the ridges of that waterchal is being affected.

8. Having considered the materials placed on record, particularly the Commissioner's report and the findings entered by the learned Munsiff and the learned District Judge, it is to be found that the right claimed by the petitioner over the waterchal in question or ridges is yet to be established by the petitioner by adducing evidence. Even if it is assumed that the waterchal or its ridges were being used by the petitioner for accessing his property, then also I find from Ext.P4 that the Panchayat has been directed to ensure that the 2nd respondent does not encroach upon the portion of the waterchal over which he was permitted to place the slabs and that passage of the general public over the slab is not prevented. Mr.Sethumadhavan submits that the petroleum outlet of the 2nd respondent has now been commissioned and the 2nd respondent has constructed compound walls around the outlet as a result of which the petitioner has been prevented from accessing his properties through the waterchal over which concrete slabs have now been placed. Strong exception was taken by Mr.Chitambaresh to the above

submission. Learned counsel submitted that the 2nd respondent has not enclosed the portion of the waterchal over which concrete slabs have now been laid, at all. The 2nd respondent has not obstructed and will not obstruct the petitioner or any other member of the Panchayat who is desirous of walking through the concrete slabs from doing so. The above submissions of Mr.Chitambaresh are recorded. He further submitted that all the directions in Ext.P4 order which restrains him from enclosing the area covered by the slabs and from interfering with passage of people through the concrete slabs will be faithfully obeyed and complied with by the 2nd respondent. The above submission is also recorded. Recording the above submissions, the Writ Petition will stand disposed of without granting the reliefs sought for. It is further made clear that the civil rights which the petitioner claims over the area of the waterchal will be adjudicated and decided by the learned Munsiff after trial on O.S.No.2565 of 2005.

The parties will bear their respective costs.

srd

PIUS C.KURIAKOSE, JUDGE